



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Stuart Fleming, Ward 1
Grif Chalfant, Ward 2
Johnny Walker, Ward 3
G. A. (Andy) Morris, Ward 4
Ruben Sands, Ward 5
Michelle Cooper Kelly, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, February 8, 2017

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Stuart Fleming, Grif Chalfant, Johnny Walker, G. A. (Andy) Morris, Ruben Sands, Michelle Cooper Kelly and Philip M. Goldstein

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:10 p.m.

INVOCATION:

Mayor Tumlin called upon Council member Philip M. Goldstein to give the invocation.

PLEDGE OF ALLEGIANCE:

Everyone was asked to remain standing for the Pledge of Allegiance.

PRESENTATIONS:

20170113

Presentation of ESGR Seven Seals Award

Presentation of the Employer Support of the Guard and Reserve (ESGR) Seven Seals Award to the City of Marietta from the Georgia State Committee Chair, Mr. David Bockel, and the Georgia State Committee Vice Chair, Mr. Kevin Wince.

The Seven Seals Award is presented in recognition of significant individual or organizational achievement, initiative, or support that promotes and supports the ESGR mission.

Presented

PROCLAMATIONS:

ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:

SCHEDULED APPEARANCES:

20170107 Scheduled Appearance

Scheduled Appearance - Larry Wills

Present

CONSENT AGENDA: Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Pro tem Michelle Cooper Kelly briefly explained the consent agenda process.

A motion was made by Council member Chalfant, seconded by Council member Goldstein, to suspend the rules of order to add the following items to the consent agenda:

Motion to authorize advertisement of a proposed amendment to the Zoning Code to require that the developer and subsequent HOA shall show sufficient budget to install and maintain any private streets within any newly created subdivision and shall notify all future homeowners in the subdivision regarding this requirement prior to purchase. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved

City Attorney Doug Haynie noted the following changes to the consent agenda:

-under Ordinances: Agenda item 20170006 was added to the consent agenda. Agenda item 20170008 was added to the consent agenda as a motion to table until the March 8, 2017 Council meeting.

-under Ordinances: Agenda item 20161196 was added to the consent agenda with Council member Goldstein voting against.

-under Judicial/Legislative: Agenda item 20161281 was added to the consent agenda.

-under Personnel/Insurance: Agenda item 20170055 remains on the consent agenda with an amendment to increase the compensation for Municipal Court Chief Judge & Prosecuting Attorney by 3%.

-under Other Business: Agenda items 20170018, 20170157 and 20170158 were added to the consent agenda.

-under Other Business: Agenda item 20170111 remains on the consent agenda, as amended.

A motion was made by Council member Walker, seconded by Council member Sands, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 – 0 – 0 Approved

with the following exceptions:

Council member Goldstein voting against agenda item 20171196

MINUTES:

*** 20170054 Executive Session Minutes**

Review and approval of the following executive session minutes:

January 11, 2016 Agenda Work Session
January 27, 2016 Special Called Agenda Work Session
February 8, 2016 Agenda Work Session
February 24, 2016, Special Called Agenda Work Session

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

*** 20170098 Regular Minutes - January 11, 2017**

Review and approval of the January 11, 2017 regular meeting minutes.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

MAYOR'S APPOINTMENTS: (for informational purposes only)

CITY COUNCIL APPOINTMENTS:

* **20170045 Historic Preservation Commission Appointment - Ward 1**

Appointment of Steve Imler to the Marietta Historic Preservation Commission (Ward 1), for a 3-year term expiring February 9, 2020.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170052 Marietta Historic Board of Review - Ward 1**

Appointment of Dorothy Woodruff to the Marietta Historic Board of Review (Ward 1), for a two year term expiring February 9, 2019.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

ORDINANCES:

20160895 Z2016-28 [REZONING] TULEY & TULEY, INC.

Z2016-28 [REZONING] TULEY & TULEY, INC. is requesting the rezoning of approximately 3.0 acres located in Land Lot 1066, District 16, Parcels 0240, 0250, 0350, and 1150, 2nd Section, Marietta, Cobb County, Georgia, and being known as 1279 & 1293 Barnes Mill Road and 626 & 630 Merritt Road from R-3 (Single Family Residential - 3 units/acre), R-2 (Single Family Residential - 2 units/acre), and CRC (Community Retail Commercial) to PRD-SF (Planned Residential Development - Single Family) and CRC (Community Retail Commercial).

City Attorney Doug Haynie opened the public hearing and explained the rules of order. Mr. Haynie then swore in those wishing to speak.

Rusty Roth, Acting Development Services Director, presented information regarding the request to rezone property located at 1279 & 1293 Barnes Mill Road and 626 & 630 Merritt Road from R-3 (Single Family Residential - 3 units/acre), R-2 (Single Family Residential - 2 units/acre), and CRC (Community Retail Commercial) to PRD-SF (Planned Residential).

Tuley and Tuley, Inc, along with the owners of the property, seek to rezone a total of 3.67 acres for the purpose of constructing a new residential neighborhood consisting of 18 homes. Mr. Tuley presented site plans showing the configuration of the homes and a diagram showing the location of a detention pond at the corner of Barnes Mill Road and Merritt Road.

Discussion was held regarding the various variances being requested, such as the request to increase the maximum impervious surface area from 60% to 78% and the request to eliminate the deceleration lane along Barnes Mill Road.

Discussion was also held regarding the remaining parcel for which no proposal has been submitted.

The following adjacent and nearby property owners expressed concern regarding the development: Alice Summerour, David Fritsch, R. J. White, Melissa Vickery and Trammel Vickery.

Further discussion was held.

There was general agreement that this matter be tabled to allow the property owner additional time to work with the neighboring property owners.

A motion was made by Council member Kelly, seconded by Council Fleming, to table the rezoning request. The motion carried by the following vote:

Vote: 7 – 0 – 0 Tabled

* **20170006**

Z2017-06 [REZONING] TNTF, LLC

[Ord 7943](#)

Z2017-06 [REZONING] TNTF, LLC is requesting the rezoning of approximately 20.5 acres located in Land Lots 1239, 1240, 1281 & 1282, District 16, Parcels 0270, 0060, & 1310, 2nd Section, Marietta, Cobb County, Georgia, and being known as 50 Powers Ferry Road, 2301 & 2315 Wylie Drive from CRC (Community Retail Commercial) to MXD (Mixed Use Development).

Public hearing held during the consent agenda.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170008**

Z2017-07 [REZONING] DAVID WEEKLEY HOMES

Z2017-07 [REZONING] DAVID WEEKLEY HOMES is requesting the rezoning of approximately 14.52 acres located in Land Lots 141 & 148, District 17, Parcels 0010 & 0210, 2nd Section, Marietta, Cobb County, Georgia, and being known as 838 & 848 Powder Springs Street from R-2 (Single Family Residential - 2 units/acre) to PRD-SF (Planned Residential Development - Single Family).

Council member Goldstein disclosed that he and/or his family members have been represented by Kevin Moore and/or his firm.

Motion to table the request for rezoning Z2017-07, David Weekley Homes, until the March 8, 2017 Council meeting.

This matter was Tabled on the Consent Agenda.

Vote: 7 – 0 – 0 Tabled

20170010**Z2017-09 [REZONING] DAVID YOUSSE****Ord 7944**

Z2017-09 [REZONING] DAVID YOUSSE is requesting the rezoning of approximately 0.14 acres located in Land Lot 1290, District 16, Parcel 0030, 2nd Section, Marietta, Cobb County, Georgia, and being known as 25 Trammell Street from OI (Office Institutional) to OI (Office Institutional) with an additional use as a single-family residence.

City Attorney Doug Haynie opened the public hearing and called forward those wishing to speak.

Rusty Roth, Acting Development Services Director, presented information regarding the request to rezone property located at 25 Trammell Street from OI (Office Institutional) to OI (Office Institutional), with an additional use as a single-family residence.

Mr. Youssi requested rezoning for the property to build a bedroom, bathroom and carport addition. Mr. Youssi also requested to reduce the rear set back from 35' to 15' for the bedroom addition and to reduce the side setback from 7.5' to 2' to allow for the new carport.

Seeing no one else wishing to speak, the public hearing was closed.

Discussion was held be Council regarding the requested variance to allow gravel as an acceptable surface for the driveway. Mr. Youssi stated that it is a shared driveway with his neighbor and that there were no plans to pave the driveway.

A motion was made by Council member Walker, seconded by Council Chalfant, to approve the rezoning of 25 Trammell Street from OI (Office Institutional) to OI (Office Institutional) with an additional use as a single family residence, as presented. The motion carried by the following vote:

Vote: 7 – 0 – 0**Approved****20170011****Z2017-10 [REZONING] JEREMY KEYSER****Ord 7945**

Motion to approve the rezoning of approximately 0.2 acres located in Land Lot 1147, District 16, Parcel 0390, 2nd Section, Marietta, Cobb County, Georgia, and being known as 363 Campbell Hill Street from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial) with an additional use as a single-family residence.

City Attorney Doug Haynie opened the public hearing and called forward those wishing to speak.

Rusty Roth, Acting Development Services Director, presented information regarding the request to rezone property located at 363 Campbell Hill Street from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial) with an additional use as a single-family residence.

Mr. Keyser requested rezoning for the property in order renovate the duplex into a single-family residence. Mr. Keyser mentioned that he would also be willing to accept the rezoning to R4 (Single Family Residential 4 units/acre).

Seeing no one else wishing to speak, the public hearing was closed.

Discussion was held be Council.

A motion was made by Council member Morris, seconded by Council Fleming, to approve the rezoning request for 363 Campbell Hill Street from NRC (Neighborhood Retail Commercial) to NRC (Neighborhood Retail Commercial) with an additional use as a single-family residence, as presented. The motion carried by the following vote:

Vote: 7 – 0 – 0 Approved

Mr. Roth inquired about the R4 (Single Family Residential 4 units/acre) zoning, to which the applicant has agreed. There was general agreement to rezone the property to R4 (Single Family Residential 4 units/acre).

A motion was made by Council member Morris, seconded by Council member Goldstein, to reconsider the motion for agenda item 20170011, Z2017-10 Rezoning for 363 Campbell Hill Street. The motion carried by the following vote:

Vote: 7 – 0 – 0 Approved

A motion was made by Council member Morris, seconded by Council Fleming, to approve the rezoning request for 363 Campbell Hill Street from NRC (Neighborhood Retail Commercial) to R4 R-4 (Single Family Residential 4 units/acre). The motion carried by the following vote:

Vote: 7 – 0 – 0 Approved

* **20161196**

[Ord 7946](#)

CA2017-03 [CODE AMENDMENT]

CA2017-03 [CODE AMENDMENT] Proposal to amend Chapter 10-10-130, Domesticated Animals, of the Marietta Code of Ordinances; as well as the Comprehensive Development Code of the City of Marietta, Division 708.01 Single Family Residential/Agriculture - 1 unit/acre (R-1), Division 708.02 Single Family Residential - 2 units/acre (R-2), Division 708.03 Single Family Residential - 3 units/acre (R-3), Division 708.04 Single Family Residential - 4 units/acre (R-4), regarding Temporary/Conditional Uses Allowed by the Director, to allow for keeping chickens; and Division 724.02 Definitions of Terms.

Public hearing held during the consent agenda.

This matter was Approved on the Consent Agenda.

Vote: 6 – 1 – 0 Approved
Voting Against: Philip M. Goldstein

RESOLUTIONS:**CITY ATTORNEY'S REPORT:***** 20170126 Denial of Claim**

Denial of Claim for Austin Jason Aldridge

This matter was Approved to Deny Claim on the Consent Agenda.

Vote: 7 – 0 – 0

Approved to Deny Claim

CITY MANAGER'S REPORT:**MAYOR'S REPORT:****COMMITTEE REPORTS:****1. Economic/Community Development: G. A. (Andy) Morris, Chairperson***** 20170070 Military Zone Job Tax Credit**

Motion to authorize to send a letter to the Department of Community Affairs to designate Census Tract 311.13 in Marietta as a Military Zone.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

2. Finance/Investment: Stuart Fleming, Chairperson*** 20170080 LiveSAFE Resources Grant**

Motion to approve the request from the LiveSAFE Resources (Formally known as YWCA of Marietta) to sign an application for a DCA Emergency Solutions Grant for the domestic violence shelter and transitional housing programs. The current Grant Application has not been received, so included is a copy of last year's grant application.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* **20170110 GMA Newly Elected Officials Training**

Motion approving travel and training expenses for Council member Ruben Sands to attend the required GMA Newly Elected Officials Training.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

* **20161281 Revised Detailed Plan - Session St Townhomes (425 N. Sessions St)**

Motion to approve the request by Taylor Morrison of Georgia, LLC to revise the detailed plan, including attached detailed plan dated 1/27/17, detailed tree plan dated 1/11/17, and building elevations dated 2/7/17 and signed by the applicant, for nineteen (19) townhomes at 425 North Sessions Street.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170064 Forest Hills Historic District - Designation Hearing**

Motion to authorize staff to advertise a public hearing for the designation of the Forest Hill Historic District on Wednesday, March 8, 2017.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170073 (Revision to the Detailed Plan for Wynhaven (560 Powder Springs Street)**

Motion to approve the revised detailed plan by Lennar Inc that will reconfigure the northwestern corner of the development site to accommodate the storm water detention pond, as per the attached detailed plan signed by the applicant and dated February 8, 2017.

In accordance with Section 708.20.J.4 of the Marietta City Code, Lennar Inc. is requesting the approval of the revisions to the detailed plan for Wynhaven.

Council member Goldstein disclosed that he and/or his family members have been represented by Kevin Moore and/or his firm.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

4. Parks, Recreation and Tourism: Michelle Cooper Kelly, Chairperson*** 20170060 2017 Special Events and Associated Requests for Approval**

Motion to approve the attached events labeled 20170060 A-K for street closures and alcohol sales and/or consumption as requested with the following exception: Chalktoberfest street closures on E. Park Square, Atlanta St., Roswell St., Lawrence St., Cherokee St., Church St shall take place at 7:30 pm instead of 1 pm as requested on the application. The eastbound lane of Mill St. shall close at 1 pm and the westbound lane of Mill St to the railroad tracks shall close at 7:30 pm.

Council member Goldstein disclosed that he is on the Marietta Welcome Center Board, a current or past member of the Marietta Museum of History, current or past member of the Marietta/Cobb Museum of Art.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

*** 20170085 Fundraising for Elizabeth Porter Park Statue**

A motion authorizing the sale and installation of inscribed bricks by the Elizabeth Porter Historic Art Committee for the purpose of raising funds for the Elizabeth Porter statue to be placed with Elizabeth Porter Park as previously approved in the park development plan.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

5. Personnel/Insurance: Johnny Walker, Chairperson*** 20170055 2017 Appointed Official Review/ Compensation****Ord 7947**

Motion to approve the following for compensation of certain appointed officials effective January 1, 2017.

1. Approval of a 1.5 percent increase for Municipal Court Chief Judge & Prosecuting Attorney.
2. Approval of a 4 percent increase for City Manager and the amendment of the existing employment agreement as attached.
3. Approval of a 3 percent increase for Assistant to the Mayor and the changing of her hours per week to 34 as per the attached agreement.
4. Approval of a 5 percent increase for City Clerk.
5. Approval of a 5 percent increase for the BLW General Manager.

Motion to approve the following for compensation of certain appointed officials effective January 1, 2017, with an amendment to approve a 3% increase for the Municipal Court Chief Judge & Prosecuting Attorney by 3%.

Council member Fleming voting against this amendment.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved as Amended

6. Public Safety Committee: Ruben Sands, Chairperson

*** 20170066 Revisions to MPD Policies**

Motion to revise the following policies: A030 (Code of Conduct), A044 (Uniforms, Equipment & Departmental Property) & A090 (Court Procedures).

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

7. Public Works Committee: Grif Chalfant, Chairperson

*** 20170076 Cemetery Trail Utilities**

Motion authorizing aerial utility relocations for the Cemetery Trail project.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

*** 20170077 Williams Drive Utility Variance**

Motion approving variance from the underground utility ordinance, 5-4-160, for utility work shown on the attached letter from Comcast dated January 6, 2017 and Application for Utility Construction Permit project number S1093RH-City AER to service 1787 and 1791 Williams Drive, this motion does not grant a perpetual variance. Comcast must relocate underground at their expense if other utilities at the location are moved underground.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

*** 20170078 Easements on Franklin Gateway Sports Complex**

Motion to approve the Marietta Power & Water proposed utility easements on Franklin Gateway Sports Complex Property.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

*** 20161295 Electric Vehicle Charging Stations**

Motion to approve the installation of the Electric Vehicle Charging Stations at the Franklin Gateway Sports Complex and at the city parking lot near the Root House.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

OTHER BUSINESS:

*** 20170018 V2017-06 [VARIANCE] TRAVIS MARK WORD RUSHING (CHRISTIAN GRUNER)**

V2017-06 [VARIANCE] TRAVIS MARK WORD RUSHING (CHRISTIAN GRUNER) is requesting variances for property located in Land Lot 1239, District 16, Parcel 0030, 2nd Section, Marietta, Cobb County, Georgia and being known as 1268 Roswell Road. Ward 7A.

1. Variance to reduce the minimum lot size required for a billboard and automobile sales to 0.83 acres;
2. Variance to waive the requirement that a billboard be regulated as a principal use;
3. Variance to allow a billboard remain located on a lot upon which a building and signage is located;
4. Variance to allow a billboard remain located within 1,000 foot radius of another billboard;
5. Variance to reduce the required setbacks for the existing billboard;
6. Variance to allow an existing billboard remain within 500 feet of a residential zoning district.

Motion to table variance request V2017-06, Travis Mark Word Rushing, until the March 8, 2017 Council meeting.

This matter was Tabled on the Consent Agenda.

Vote: 7 – 0 – 0 Tabled

20160762 Charter Amendment related to Municipal Court Judges and Municipal Court Prosecuting Attorney

[Ord 7942](#)

Motion to approve the second reading of Amendment to the Charter for City of

Marietta Section 4.11 entitled “Municipal Court,” Section 6.2 entitled “Chief Judge, Associate Judges; Compensation; Oaths,” and Section 6.6 entitled “Prosecuting Attorney.”

City Attorney Doug Haynie opened the public hearing and called forward those wishing to speak.

Seeing no one else wishing to speak, the public hearing was closed.

The motion was made by Council member Chalfant, seconded by Council member Morris, to approve amendments to the City Charter Marietta Section 4.11 entitled “Municipal Court,” Section 6.2 entitled “Chief Judge, Associate Judges; Compensation; Oaths,” and Section 6.6 entitled “Prosecuting Attorney.

Concern was expressed and comments made by Council member Goldstein.

The motion carried by the following vote:

Vote: 5 – 1 – 0 Second Reading Approved

Absent for the vote: Stuart Fleming

Voting Against: Philip M. Goldstein

* **20170128**

GMA District 3 West Officers for 2017-2018

Motion to nominate Michelle Cooper-Kelly, Marietta Mayor Pro tem, as President of the Third District West Region for GMA Board.

Requested by Mayor Tumlin.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170111**

Drainage Easement on 500 Powder Springs St (Golf Course)

Motion to approve drainage easements, as shown on the attached plans, on the city golf course for the development of Promenade at the Square (Wynhaven). Minor modifications to the easements may be approved by the City Attorney and the Parks, Recreation, & Facilities Director and Public Works Director.

Council member Goldstein disclosed that he and/or his family members have been represented by Kevin Moore and/or his firm.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved as Amended

* **20170127 Cobb County Tax Commissioner's Certification of Agreement**

Request for approval of the Cobb County Tax Commissioner's Certification of Agreement related to the disbursement of the Title Ad Valorem Tax (TAVT).

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170157 840 N. Marietta Parkway, 349 and 357 Cobb Parkway N.**

Motion to authorize the acquisition of property owned by Oaktree Corporation (d/b/a Horsetown) on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20170158 732, 734, 750, 770, 780, 790 N. Marietta Parkway**

Motion to authorize the acquisition of property owned by Emmett L. Burton and Dolores R. Burton on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

20170114 Disability Termination Appeal Hearing

The City Council will hear an appeal from Michael Rigo regarding the Pension Board's decision to terminate his disability retirement pension retroactive to July 1, 2014.

The Pension Board decision to terminate the disability was approved November 21, 2016, by a vote of 8-0-0, with one member absent.

Mayor Tumlin opened the hearing and called forward those wishing to speak.

City Attorney Doug Haynie explained that City Council would hear an appeal from Michael Rigo regarding the Pension Board's decision to terminate his disability retirement pension retroactive to July 1, 2014. The Pension Board decision to terminate the disability was approved November 21, 2016.

Mr. Read Gignilliat with Elarbee, Thompson, Sapp and Wilson, labor and employment counsel for the City, spoke on behalf of the Pension Board. Mr. Gignilliat referred to the documents/exhibits submitted into evidence and considered by the pension board in reaching its. He then summarized the events leading up to the appeal being heard by Council.

In 1995, Mr. Rigo was employed by the City as a police officer when he was involved in an off-duty automobile accident. He later applied for and was granted disability benefits under the Pension Plan 4022, as a result of head and back injuries. In 2013, after learning that Mr. Rigo was gainfully employed as a licensed real estate agent, the City notified him that his disability benefits would be suspended. Mr. Rigo appealed this decision in a timely manner and was granted a hearing before the Pension Board. As stated before, the Pension Board decision to terminate the disability was approved November 21, 2016.

Mr. Gignilliat stated that Mr. Rigo's appeal did not raise any challenges to factual issues, but the interpretation and application of 2 provisions of the 4022 Plan, Article VIII Section 1 and Section 5. In the 1994 version of the 4022 Plan, Article VIII, Section 1 of the 4022 Plan provides: An Employee will be considered disabled if unable, solely because of disease or accidental bodily injury, to work at his or her own occupation. Section 5 reads, in relevant part: A period of total disability ceases on the earliest to occur of the following: b. The date the Employee commences work at a reasonable occupation means any gainful activity for which the Employee is engaged, or may reasonably become engaged, fitted by education, training or experience. In conclusion, Mr. Gignilliat argued that the decision of the pension board shall be presumed correct and based upon sufficient facts to sustain it.

Mrs. Nancy Pridgen, attorney for Mr. Rigo, reiterated the claim stated in the appeal letter, that the basis for appeal is that there is a conflict between Sections 1 and 5 of Article VIII of the 4022 Plan. Due to the interaction between the "own occupation" standard in Section 1 for qualifying for benefits, but the "[any] reasonable occupation" standard for terminating benefits in Section 5, there is an ambiguity in the 4022 Plan.

Mrs. Pridgen, maintained that in this case, the only reasonable interpretation is that so long as Mr. Rigo remains disabled from his own occupation, disabled from the police position he was performing before his disability in 1995, then he remains entitled to disability retirement benefits. As such, his benefits should not be terminated under Section 5b of Article VIII.

Discussion was held regarding the documents and evidence presented to council and relied upon by the pension board in reaching its decision.

After in depth discussion, a motion was made to uphold the decision of the Pension Board to terminate the disability retirement pension for Michael Rigo.

The motion was made by Council member Goldstein, seconded by Council member Walker, to uphold the decision of the Pension Board to terminate the disability retirement pension for Michael Rigo. The motion carried by the following vote:

Vote: 7 – 0 – 0

Approved

*** 20170164**

Zoning Code Amendment

Motion to authorize advertisement of a proposed amendment to the Zoning Code to require that the developer and subsequent HOA shall show sufficient budget to install and maintain any private streets within any newly created subdivision and shall notify all future homeowners in the subdivision regarding this requirement prior to purchase.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved for Advertisement

*** 20170144**

BLW Actions of February 6, 2017

Review and approval of the February 6, 2017 actions and minutes of Marietta Board of Lights and Water.

This matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

UNSCHEDULED APPEARANCES:

There were no unscheduled appearances:

The meeting was recessed at 10:33 pm, and reconvened at 11:16 pm.

ADJOURNMENT:

The meeting was adjourned at 11:16 p.m.

Date Approved: March 8, 2017

R. Steve Tumlin, Mayor Tumlin

Attest: _____
Stephanie Guy, City Clerk